

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN T. ROGERS,

Petitioner,

No. CIV S-01-0975 FCD GGH P

vs.

CLAUDE FINN,

Respondent.

ORDER

On April 29, 2004, the court dismissed the petition on grounds that the claims were procedurally defaulted. On December 16, 2005, the Ninth Circuit Court of Appeals reversed and remanded this matter.

Having apparently determined that respondent did not meet its burden of proving the adequacy of California's untimeliness rule (an issue that was never reached in this court because petitioner had not met his burden) the Ninth Circuit nevertheless remanded this case for the court to make this determination. The undersigned is puzzled by this seemingly conflicted holding and remand. Nevertheless, respondent can attempt for the first time in this court to establish the adequacy of the bar if respondent thinks he can do so.

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DATED: 1/10/06

GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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